

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

REPLY BRIEF FOR THE APPELLANT

Ex parte Bing WANG

METHOD AND SYSTEM FOR UNIFIED SESSION CONTROL OF MULTIPLE
MANAGEMENT SERVERS ON NETWORK APPLIANCES

Serial No. 10/748,459

Appeal No.:

Group Art Unit: 2456

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Request for Oral Hearing

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Appellant:

Confirmation No.: 7057

Bing WANG

Appeal No.: Unknown

Serial No.: 10/748,459

Group Art Unit: 2456

Filed: December 29, 2003

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For: METHOD AND SYSTEM FOR UNIFIED SESSION CONTROL OF MULTIPLE
MANAGEMENT SERVERS ON NETWORK APPLIANCES

REPLY BRIEF

January 13, 2010

I. INTRODUCTION

This Reply Brief is filed in response to the Examiner's Answer mailed November 24, 2009. In the Examiner's Answer, while no new grounds of rejection were explicitly made, comments and explanations are provided which are tantamount to new points of argument or which provide a need for further clarifying of the record. This Reply Brief, therefore, is submitted to address these new points of argument, and to clarify why claims 1-2, 4-9, 11-16, and 18-25 of the pending application should be considered patentable over U.S. Publication No. 2001/0047406 to Araujo et al. ("Araujo") (with or without the addition of other references), why claim 25 should be found to relate to statutory subject matter, and therefore, why all the pending claims should be found by this Honorable Board of Patent Appeals and Interferences to be allowable.

This Reply Brief addresses numerous deficiencies and new points of argument

raised in the Examiner's Answer. Appellant's Appeal Brief, however, is maintained, and failure to repeat the arguments contained therein, or to address one or more arguments set forth in the Examiner's Answer should not be construed as a waiver or an admission. The Appeal Brief speaks for itself, and this Reply Brief merely supplements the Appeal Brief to address certain aspects of the Examiner's Answer.

II. STATEMENT ON THE STANDARD OF REVIEW

It should be noted that the Examiner's Answer does not address the issue of the appropriate standard of review, and leaves this issue somewhat unclear. To clarify, Appellant respectfully submits that 35 U.S.C. 101 places the burden on the U.S.P.T.O. to show why a patent should not be granted on an application, rather than on the applicant to demonstrate patentability. As such, the appropriate standard of review is not whether Appellant has demonstrated error in the rejection, but whether the Examiner has established that the claims fail some test for patentability. Accordingly, rather than present positive arguments in favor of patentability, Appellant has concentrated on demonstrating that the grounds of rejection presented cannot support the rejection.

III. REBUTTAL TO NEW POITS OF ARGUMENT RAISED IN EXAMINER'S ANSWER

Appellant respectfully submits that the Examiner's characterization of the cited art is inaccurate, and that consequently the Examiner's conclusions are not supported by substantial evidence.

The Examiner's Answer has numbered the arguments in a different order than they were presented in the Appeal Brief. The order in the Examiner's Answer is followed below, with the numbered points corresponding to the number used in the Examiner's Answer.

A. SSL encryption and decryption is not used between the SEP and the LAN

At pages 20-23, Appellant demonstrated that SSL encryption and decryption is not used between the SEP and the LAN in Araujo. A number of evidences were provided, and the Examiner's Answer provided several counterpoints. Appellant respectfully submits that the Examiner's Answer still has not presented a *prima facie* showing that SSL encryption and decryption are used between the SEP and the LAN in Araujo. As a consequence, various features of the claimed invention (see pages 24-30 of Appellant's Appeal Brief for the specific recitations) are neither disclosed nor suggested by Araujo, or any prior art of record.

1. The Examiner's Answer responded with several new points of argument in response to Appellant's Appeal Brief by asserting that SSL operations are performed on the data that flows between the SEP and the LAN by virtue of the fact that an SSL operation

was previously performed on the data. Whether or not this is true, it is irrelevant to the fact that SSL encryption and decryption are not used between the SEP and the LAN. In other words, the argument employed by the Examiner's Answer does not demonstrate that encryption or decryption is used **between the SEP and the LAN** even if such encryption and/or decryption are used on the same data on other connections or in other communications. In short, this argument is irrelevant to the matter at hand.

It is unclear whether the Examiner's Answer has taken the position that the data must be passed to the SSL module in order for the SSL module to be used. However, paragraph [0109] of Araujo makes it clear that the web server 350 calls on the Open SSL module 340, if necessary, to perform SSL processing, an operation that is not illustrated in path 402. However, as the Examiner's Answer has admitted, the path 402 illustrates a path that has taken place after SSL processing.

It is also unclear whether the Examiner's Answer has taken the position that virtual office software 400 corresponds to the SEP. It should be noted that paragraph [0094] of Araujo explains that Figure 3A "depicts a high-level block diagram of software 300 that executes **within SEP 200** shown in FIG. 2." (emphasis added) Likewise, Figure 3B is, as discussed at paragraph [0107] of Araujo, an illustration of "principle message paths through software 300 for passing communication between LAN and WAN connections and through SEP 200."

Finally, it is unclear whether Examiner's Answer has taken the position that virtual office software 400 **itself** performs SSL processing. The discussion in paragraph [0109] of

Araujo, which clarifies that the SSL processing is done by calling the Open SSL module 340 should make it clear the virtual office software 400 **itself** does not perform SSL processing, despite the ambiguous comment “(including performing SSL operations on the data)” in paragraph [0110]. The reference must be read as a whole. As MPEP 2141 (II) indicates, “When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to:(A)The claimed invention must be considered as a whole; (B)The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; (C)The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and (D)Reasonable expectation of success is the standard with which obviousness is determined. *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986).”

Furthermore, Appellant respectfully observes that “performing SSL operations” is mentioned in paragraph [0110] prior to the data being sent to the target software because that paragraph relates to “Incoming packets from the WAN connection” In contrast, in paragraph [0111] relating to packets going the opposite direction, the “services of Open SSL module 340” are called upon just before the information is to be sent to the remote PC (which is, as can be seen from Figure 1, on the other side of the WAN from the SEP 200). Thus, it should be clear that in communications between the SEP and the LAN, SSL is not used, whereas in communications between SEP and the WAN, SSL is used.

The argument to support the seemingly irrelevant contention that the data has already been processed for SSL purposes before being passed from the SEP to the LAN is

first provided in the Examiner's Answer at page 25, in the paragraph beginning "In response to argument (1)..." and is then repeated in more or less cut-and-paste fashion repeatedly into the arguments (2)-(9), (15), (21), (24), and (28)-(30). This will be discussed as "the cut-and-paste argument" in this discussion below.

2. The Examiner's Answer responded with a further new point of argument by (in addition to and before providing the cut-and-paste argument) asserting that "just because the information is not sent back through the open SSL module does not mean that no SSL encryption is used for communications between the SEP and the application server." Contrary to that assertion, however, the only way to employ SSL encryption is by calling the SSL module. Thus, if the open SSL module is not called, no SSL encryption is used for the communication under consideration.

The Examiner's Answer further stated (after the cut-and-paste argument): "Thus since the virtual office software is capable of performing SSL operations it is seen that the requirement of having to go through the open SSL module is not valid." The mistaken idea that the virtual office software itself performs SSL is addressed above. Furthermore, even if the virtual office software itself **could** perform SSL operations, the reference does not state that the virtual office software applies SSL encryption to the communications between the SEP and the LAN.

3. The Examiner's Answer further argued, in a new point of argument, that "the assumption that no passing through the web server indicates the system does not use SSL between the SEP and the LAN is not valid." However, as noted above, it is not necessary

to assume based on the drawing: paragraph [0111] itself informs us as to when SSL operations are performed.

The Examiner's Answer continued by stating: "As pointed out by the applicant Figure 3b does show a path (402) from the WAN going to virtual office software without going through the web server. However this does not mean that no SSL operations were performed during this path." Whether or not this statement is true, as noted previously paragraph [0109] informs us when and how SSL operations are performed on the messages from the WAN. Furthermore, paragraph [0110] explains that path 402 is not a path "from the WAN going to virtual office software" but rather from the virtual office software to the LAN (as can also be seen from inspection of Figure 3b. The path from the WAN to the virtual office software in Figure 3b is path 406, which does pass through the web server. Thus, the Examiner's Answer's characterization of the paths in Figure 3b is not correct.

Finally, after the cut-and-paste paragraph, the Examiner's Answer states that "it is seen that the assumption that no passing through the web server indicates the system does not use SSL between the SEP and the LAN is not valid since the virtual office software is capable of performing SSL operations." As noted above, however, paragraph [0109] explains how SSL operations are performed, and they are not performed by the virtual office software itself. Furthermore, the mere possibility that the virtual office software **could** or **is capable of** performing such operations is not a demonstration that the virtual office software does perform such operations for packets going from the SEP to the LAN. There is no evidence of record to support the position that the virtual office software does

perform such operations for packets going from the SEP to the LAN, and consequently no *prima facie* rejection has been presented.

4-6. For the fourth through sixth arguments, the Examiner's Answer essentially simply reused the cut-and-paste argument that has already been answered above.

7. The Examiner's Answer argued, using a new point of argument, that "most of those points [regarding the local office environment of Araujo] are not relevant to the claim language and not necessarily supported by Araujo. Araujo does not state that no authentication or encryption protocols are required between the SEP and the LAN." This comment misses the force of Appellant's arguments. Appellants arguments were directed to, in essence, a common sense understanding of the art, namely the Araujo reference. The arguments demonstrate that one of ordinary skill in the art would not view Araujo as suggesting that SSL should be performed between the SEP and the LAN because there is no common sense need for such authentication or encryption. Thus, one of ordinary skill in the art would understand the statement "for the Netilla Virtual Office all information transfer is protected by SSL" as referring to information transfer between the remote user and the SEP, not between the SEP and the local servers as the Examiner's Answer has apparently misunderstood it.

8-9, 15, 21, 24, 28-30: For the identified arguments, the Examiner essentially just repeated the cut-and-paste argument. With respect to arguments 9, 15, 21, 24, and 28-30, the Examiner further added that because the connection uses authentication, it would have been obvious for the components to perform authentication. However, the Examiner's

Answer has not established that the connection in question uses authentication.

10-14, 16-20, 22-23, and 25-27: For the identified arguments, the Examiner sets forth no substantially new arguments, essentially just insisting that the previously presented arguments are sufficient. As such, the previously presented rebuttals are similarly sufficient.

B. Claim 25 is directed to Statutory Subject Matter

31. The thirty-first argument in the Examiner's Answer relates to the issue of patentable subject matter. At pages 16-17, Appellant's Appeal Brief had demonstrated both the specification does not define a computer readable medium as a signal and that both Federal Circuit precedent and MPEP 2106.01 recognize that a computer-readable medium is statutory subject matter.

Appellant's Appeal Brief pointed that the specification provides examples of "computer-readable medium" at page 5, line 18. None of the examples are signals. In a new point of argument, the Examiner's Answer responded that "It does not appear that this is talking about the same computer readable medium being claimed." Appellant does not disagree. Nevertheless, the usage of the term in the specification helps to inform one of ordinary skill in the art as to the meaning of the term in the claims, even if a different computer-readable medium (in this case, a storage medium rather than a transmission medium) is being recited in the claims.

The Examiner's Answer also responded with the new point of argument that since a wireless link is mentioned, "this would support examiners [sic] original interpretation."

However, a wireless link uses air as the transmission medium, not a signal. The ATIS Telecom Glossary 2007 (retrieved from <http://www.atis.org/glossary/definition.aspx?id=4006> on December 10, 2009) defines “medium” as “In telecommunications, the transmission path along which a signal propagates, such as a wire pair, coaxial cable, waveguide, optical fiber, or radio path. 2. The material on which data are or may be recorded, such as plain paper, paper tapes, punched cards, magnetic tapes, magnetic disks, or optical disks.” Similarly, the Miriam-Webster Online Dictionary (retrieved from <http://www.merriam-webster.com/dictionary/medium> on December 10, 2009) defines medium as: “2(b)(4) something (as a magnetic disk) on which information may be stored.” The examples of media at page 5 of the specification fall under the transmission medium sense (which is not the signal, but the thing on which the signal travels – even in the case of a wireless link) and the claims are directed to a medium in the storage medium sense (which are also not signals, but the things that store signals).

Additionally, the Federal Circuit’s recent decision in the case *In re Nuijten* provides further confirmation: “Transitory electrical and electromagnetic signals propagating through some medium, such as wires, air, or a vacuum, are not encompassed by any of the four enumerated categories which appear in 35 U.S.C.S. § 101: ‘process, machine, manufacture, or composition of matter.’” *In re Nuijten*, 500 F.3d 1346, 1352 (Fed. Cir. 2007). Appellant notes that *Nuijten* itself explicitly distinguishes between signals and the medium through which they propagate. The present claims are directed to a computer

readable medium, not to signals. Thus, the claims are directed to patentable subject matter.

The Examiner's Answer further argues that the broadest reasonable interpretation of "computer readable medium" "includes both statutory interpretations such as various physical media, however it also includes non-statutory interpretations such as various propagation media." Thus, according to the Examiner's Answer, some embodiments that the claims read on would be non-statutory embodiments.

In other words, according to the Examiner's Answer, the claims are directed to statutory subject matter but could also be construed to cover prohibited subject matter. However, Appellant respectfully submits that one of ordinary skill in the art reading the claims in light of the specification would not reasonably conclude that the sense of propagation medium was intended given that "a computer program" is said to be "embodied on" the computer readable medium and that the computer program is "configured to control a processor to perform" the various features of claim 25.

Furthermore, although Appellant does not believe that such an interpretation of claim 25 would be reasonable on the record, a propagation medium is not unpatentable subject matter. Although transient signals have been found to be unpatentable subject matter, Appellant is unaware of any case supporting the idea that propagation media are themselves unpatentable subject matter.

Finally, the computer program claimed in claim 25 is not only interrelated with the "computer readable medium" but also with a "processor." Even if the computer readable medium were viewed as a signal, claim 25 still recites patentable subject matter because the

claimed computer program is functionally integrated with the processor, and controls the processor. A processor, like a computer readable medium, is statutory subject matter under the categories of machine and manufacture. Thus, for all the preceding reasons, claim 25 recites statutory subject matter. Reversal of the rejection of claim 25 is respectfully requested.

IV. CONCLUSION

As explained above and in the Appeal Brief, each of claims 1-2, 4-9, 11-16, and 18-25 recites subject matter which is neither disclosed nor suggested by Araujo or any prior art reference of record (alone or in any combination with one another). Furthermore each of claims 1-2, 4-9, 11-16, and 18-25 recites statutory subject matter.

As such, Appellant respectfully submits that the Final Office Action has failed to establish a *prima facie* case for lack of statutory subject matter, anticipation, and/or obviousness of any claim. This final rejection being in error, therefore, it is respectfully requested that this Honorable Board of Patent Appeals and Interferences reverse the Examiner's decision in this case and indicate the allowability of all of pending claims 1-2, 4-9, 11-16, and 18-25.

In the event that this paper is not being timely filed, Appellant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees which may be due with respect to this paper may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

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